

Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Southeast Regional Office • 20 Riverside Drive, Lakeville MA 02347 • 508-946-2700

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Kathleen A. Theoharides
Secretary

Martin Suuberg
Commissioner

December 15, 2020

MacDonald Industries Corporation
645 Walnut Street
Bridgewater, MA 02324
Attn: David MacDonald

RE: Marilyn's Landing/BFI Halifax Landfill
Soil Fill Activities
Administrative Consent Order
Enforcement Doc No. 00009681

Browning-Ferris Industries
1235 Westlakes Drive Suite 310
Berwyn, PA 19312
Attn: Kevin Bremer

Dear Mr. MacDonald and Mr. Bremer:

In connection with the referenced matter, enclosed is a copy of the fully executed Administrative Consent Order ("ACO"), Enforcement Document 00009681, by the Massachusetts Department of Environmental Protection ("MassDEP"), MacDonald Industries Corporation, and Browning-Ferris Industries ("BFI"). This ACO constitutes MassDEP approval for the reuse of imported soils as fill ("soil fill activities") in an area extending from Marilyn's Landing in Bridgewater onto the BFI Halifax Landfill in Halifax including the "swale" or the border of the two properties (i.e., Phase III). These activities are a continuation of soil fill activities (i.e., Phase II) that to date have included soil fill related activities that have been conducted at Marilyn's Landing under a previous Consent Order (i.e., Enforcement Document No. 00003451).

The combined Phase II and Phase III soil fill activities have been proposed to establish the necessary grades to support a future redevelopment (solar energy) project spanning both properties. The ACO includes a site-specific Soil Reuse Management Plan that establishes the criteria for soil acceptance and describes the monitoring conditions recording process during and after soil fill activities consistent with the requirements of MassDEP's Policy # COMM-15-001, Interim Policy on the Re-Use of Soil for Large Reclamation Projects. The terms and conditions of this ACO now apply and are binding.

This information is available in alternate format. Contact Michelle Waters-Ekanem, Director of Diversity/Civil Rights at 617-292-5751.

TTY# MassRelay Service 1-800-439-2370

MassDEP Website: www.mass.gov/dep

Printed on Recycled Paper

Thank you for your cooperation in this matter, and if you have any questions please contact Mark Dakers at (508) 946-2847.

Sincerely,



Millie Garcia-Serrano
Regional Director
Southeast Regional Office

Enclosure

CERTIFIED MAIL # 7019 2280 0002 2137 0086

ec: Michael Dutton – Town Manager
Town of Bridgewater
Town.manager@bridgewaterma.org

Charlie Seelig – Town Administrator
Town of Halifax
Charlie.seelig@halifax-ma.org

Eric Badger – Health Agent
Bridgewater Board of Health
ebadger@bridgewaterma.org

Bob Valery – Health Agent
Halifax Board of Health
bob.valery@Town.halifax.ma.us

Bridgewater Conservation Commission
CED@bridgewaterma.org

DEP- Boston
ATTN: J.Fischer
T.Adamczyk

DEP- SERO
ATTN:M. Garcia-Serrano
G. Martin
S. Pickering
M. Dakers
D. Coppi
L. Ramos

**COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the Matter of:
MacDonald Industries Corporation
& Browning-Ferris Industries, Inc.

Enforcement Document Number:
00009681
Issuing Bureau: BAW
Issuing Region/Office: SERO
Issuing Program: SW
Primary Program Cited: SW
Subpgm(s) Cited: BWSC
FMF/Program ID # 40000 & 39324

ADMINISTRATIVE CONSENT ORDER

I. THE PARTIES

1. The Department of Environmental Protection ("Department" or "MassDEP") is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. MassDEP maintains its principal office at One Winter Street, Boston, Massachusetts 02108, and its Southeast Regional Office at 20 Riverside Drive, Lakeville, Massachusetts 02347.
2. MacDonald Industries Corporation ("MacDonald") is a Massachusetts corporation, doing business as Marilyn's Landing, with its principal offices located at 645 Walnut Street, Bridgewater, Massachusetts, 02324.
3. Browning-Ferris Industries, Inc., ("BFI") is a corporation organized under the Applicable Law of Massachusetts maintains an office located at 14 Belcher Street, Plainville, MA 02762.
4. MacDonald Industries Corporation and Browning-Ferris Industries, Inc. are hereafter referred to herein as the "Respondents".

II. STATEMENT OF FACTS AND LAW

5. MassDEP is responsible for the implementation and enforcement of M.G.L. c. 111, §§ 142A-142O and the associated Air Pollution Control Regulations at 310 CMR 6.00, 310 CMR 7.00, and 310 CMR 8.00; M.G.L. c. 131 §40 and the associated Wetlands Regulations at 310 CMR 10.00; M.G.L. c. 111, §§ 150A and 150A1/2, the Solid Waste Regulations at 310 CMR 19.000, and the Site Assignment Regulations for Solid Waste Facilities at 310 CMR 16.00; M.G.L. c. 21E and the Massachusetts Contingency Plan ("MCP") at 310 CMR 40.0000; and Section 277 of Chapter 165 of the Acts of 2014. MassDEP has authority under M.G.L. c. 21E, §6 to specify reasonable requirements to regulate activities which may cause, contribute to, or exacerbate a release of oil or hazardous materials, to prevent and control and to counter the effects of such releases. MassDEP also has authority under M.G.L. c. 21A, § 16 and the Administrative Penalty Regulations at 310 CMR 5.00 to assess civil administrative penalties to persons in noncompliance with the laws and regulations set forth above.
6. M.G.L. c. 21E, §5 sets out liability for the release or any threat of release of oil or hazardous material. This liability includes the owner or operator of a site from or at which there is a release or threat of release as well as any person who at the time of storage or disposal of any hazardous material owned or operated the site at or on which such hazardous material is stored or disposed of and from which there is a release or threat of release and

any person who contracts to arrange for the transport, disposal, storage or treatment of hazardous material to or in a site from or at which there is a release or threat of a release.

7. MassDEP has authority under M.G.L. c. 21E, §9 to order potentially responsible parties ('PRPs') to conduct assessment, containment and removal actions, or to require the production or analysis of samples or records, consistent with the requirements of the MCP and as MassDEP reasonably deems necessary. Issuance of an Order pursuant to § 9 does not preclude MassDEP from recovering damages, costs, civil penalties, criminal fines and sanctions, injunctive relief, or any action authorized by M.G.L. c. 21E, § 4.

8. Pursuant to M.G.L. c. 21E, §3, MassDEP promulgated the regulations found at 310 CMR 40.0000, commonly known as the "Massachusetts Contingency Plan" ("MCP").

9. 310 CMR 40.0032(3), known as the "anti-degradation" section of the MCP, states:
Soils containing oil or waste oil at concentrations less than an otherwise applicable Reportable Concentration and that are not otherwise a hazardous waste, and soils that contain one or more hazardous materials at concentrations less than an otherwise applicable Reportable Concentration and that are not a hazardous waste, may be transported from a disposal site without notice to or approval from the Department under the provisions of...[the MCP], provided that such soils:

(a) Are not disposed or reused at locations where the concentrations of oil or hazardous materials in the soil would be in excess of a release notification threshold applicable at the receiving site, as delineated in 310 CMR 40.0300 and 40.1600; and

(b) Are not disposed or reused at locations where existing concentrations of oil and/or hazardous material at the receiving site are significantly lower than the levels of those oil and/or hazardous materials present in the soil being disposed or reused.

10. 310 CMR 40.0006 contains the following useful definitions:

Contaminated soil means soil containing oil and/or hazardous material at concentrations equal to or greater than a release notification threshold established by 310 CMR 40.0300 and 40.1600.

Hazardous material means material, including, but not limited to, any material in whatever form which, because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare or to the environment, when improperly stored, treated, transported, disposed of, used, or otherwise managed.....The term shall also include, but is not limited to, material regulated as hazardous waste or recyclable material under 310 CMR 30.000.

No Significant Risk means a level of control of each identified substance of concern at a site or in the surrounding environment such that no such substance of concern shall present a significant risk of harm to health, safety, public welfare or the environment during any foreseeable period of time.

Oil means insoluble or partially soluble oils of any kind or origin or in any form, including, without limitation, crude or fuel oils, lube oil or sludge, asphalt, insoluble or partially insoluble derivatives of mineral, animal or vegetable oils and white oil. The term shall not include waste oil, and shall not include those substances which are included in 42 U.S.C. § 9601(14).

Reportable Concentration and RC each means the concentration of oil or hazardous material in soil or groundwater which requires notification to the Department under MGL c. 21E, § 7 and/or 310 CMR 40.0360 through 310 CMR 40.0362.

11. 310 CMR 16.02 contains the following useful definitions:

Asphalt Pavement, Brick, and Concrete Rubble means rubble that contains only weathered (cured) asphalt pavement, clay bricks and attached mortar normally used in construction, or concrete that may contain rebar. The rubble shall not be painted, coated or impregnated with any substance. The rubble shall not be mixed with or contaminated by any other wastes or debris.

Handling means processing, storing, transferring or treating a material or solid waste.

Landfill means a facility or part of a facility established in accordance with a valid site assignment and Department-issued permit for the disposal of solid waste into or on land.

Processing means the use of any method, technique or process to alter the physical characteristics of a material or solid waste through any means, including, without limitation, separating, baling, shredding, crushing or reworking. Storage alone does not constitute processing.

Residual means all waste remaining after treatment or processing. Residual remaining after treatment or processing is not pre-sorted material. Air and water discharges managed in accordance with applicable regulations are not residuals.

Site Assignment means a determination by a board of health or by the Department as specified in M.G.L. c. 111, § 150A which:

(a) Designates an area of land for one or more solid waste uses subject to conditions with respect to the extent, character and nature of the facility that may be imposed by the assigning agency after a public hearing in accordance with M.G.L. c. 111, § 150 A; or

(b) Establishes that an area of land was utilized as a site for the disposal onto land of solid waste or as a site for a refuse disposal incinerator prior to July 25, 1955 as provided in St. 1955, c. 310, § 2. The area of land site assigned under 310 CMR 16.02: *Site Assignment* shall be limited to the lateral limits of the waste deposition area ("the footprint"), or the area occupied by the incinerator, as they existed on July 25, 1955, except as otherwise approved by the Department in approved plans. Said assignment shall apply only to uninterrupted solid waste disposal activities within the footprint or plan-approved area and shall have no legal force or effect at any time after cessation of disposal activities except as otherwise provided at 310 CMR 16.21.

12. 310 CMR 19.006 contains the following useful definitions:

Solid Waste or waste means, any useless, unwanted or discarded solid, liquid or contained gaseous material resulting from industrial, commercial, mining, agricultural, municipal or household activities that is disposed or is stored, treated, processed or transferred pending such disposal, but does not include:

(a) hazardous waste as defined and regulated pursuant to 310 CMR 30.000: *Hazardous Waste*;

- (b) sludge or septage which is land applied in compliance with 310 CMR 32.00: *Land Application of Sludge and Septage*;
 - (c) waste-water treatment facility residuals and sludge ash from either publicly or privately owned waste-water treatment facilities that treat only sewage and which is treated and/or disposed at a site regulated pursuant to M.G.L. c.83, §§ 6 and 7 and/or M.G.L. c.21, §§ 26 through 53 and the regulations promulgated there under, unless the waste-water treatment residuals and/or sludge ash are co-disposed with solid waste;
 - (d) septage and sewage as defined and regulated pursuant to 314 CMR 5.00; *Ground Water Discharge Permit Program*, and regulated pursuant to M.G.L. c.21, §§ 26 through 53 or 310 CMR 15.00: *The State Environmental Code, Title 5: Standard Requirements for the Siting, Construction, Inspection, Upgrade and Expansion of On-site Sewage Treatment and Disposal Systems and/or for the Transport and Disposal of Septage*, provided that 310 CMR 16.00 does not apply to solid waste management facilities which co-dispose septage and sewage with solid waste;
 - (e) ash produced from the combustion of coal when reused as prescribed pursuant to M.G.L. c. 111, § 150A;
 - (f) solid or dissolved materials in irrigation return flows;
 - (g) source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954;
 - (h) materials and by-products generated from and reused within an original manufacturing process;
 - (i) materials which are recycled, composted, or converted in compliance with 310 CMR 16.03, 16.04 or 16.05; and
 - (j) organic material when handled at a Publicly Owned Treatment Works as defined in 314 CMR 12.00: *Operation and Maintenance and Pretreatment Standards for Wastewater Treatment Works and Indirect Dischargers* and as approved by the Department pursuant to 314 CMR 12.00: *Operation and Maintenance and Pretreatment Standards for Wastewater Treatment Works and Indirect Dischargers*.
13. The placement, dumping, disposing or reuse of soil containing oil and hazardous material ("OHM") into the environment at concentrations equal to or greater than the applicable reportable concentrations is a release as that term is defined in M.G.L. c. 21E § 2. Depending on the site-specific conditions and the nature of the OHM present in the soil, such releases may have significant adverse human health and environmental effects.
14. MassDEP has authority under Section 277 of Chapter 165 of the Acts of 2014 to establish regulations, guidelines, standards or procedures for determining the suitability of soil used as fill material for the reclamation of quarries, sand pits and gravel pits. The regulations, standards or procedures shall ensure that the reuse of soil poses no significant risk of harm to health, safety, public welfare or the environment considering the transport, filling operations and the foreseeable future use of the filled land.
15. On October 2, 2013, MassDEP issued the "Similar Soils Provision Guidance" (WSC#-13-500 or "Similar Soils Policy"). The Similar Soils Policy addresses the specific requirements of 310 CMR 40.0032(3) and the

criteria by which a Licensed Site Professional ("LSP") may determine that soil may be moved without prior notice to or approval from the Department. The Similar Soils Policy is not applicable to the excavation and movement of soil from locations other than disposal sites as defined in M.G.L. c. 21E § 2, and the management of soils considered Remediation Wastes as defined in the MCP at 310 CMR 40.0006. Moreover, nothing in the Similar Soils Policy eliminates, supersedes or otherwise modifies any local, state or federal requirements that may also apply to the movement or management of soil, for this project or other similar projects, including any local, state or federal permit or approvals that must be obtained before placing soil at a receiving location.

16. On September 4, 2014, MassDEP issued a revision to the Similar Soils Policy.

17. On August 28, 2015, MassDEP issued the "Interim Policy on the Re-Use of Soil for Large Reclamation Projects" ("COMM-15-01" or "Reclamation Soil Policy") pursuant to Section 277 of Chapter 165 of the Acts of 2014. The Reclamation Soil Policy describes MassDEP's intent to issue Site-specific approvals, in the form of an Administrative Consent Order, to ensure that the reuse of large volumes of soil for the reclamation of sand pits, gravel pits and quarries poses no significant risk of harm to health, safety, public welfare or the environment and would not create new releases or threats of releases of OHM. COMM-15-01 also requires the development of a corresponding Soil Reuse Management Plan ("SRMP") that provides detailed procedures for the acceptance of soil.

18. A SRMP includes a detailed plan of how materials will be managed to prevent nuisance conditions such as noise, litter, odor and dust; a detailed storm-water management plan to prevent impacts to sensitive receptors; a detailed wetland impact provisions approved by the local Conservation Commission; a communication plan for the public to demonstrate that the appropriate local officials and general public are aware of the project and have been afforded the opportunity for meaningful input; a process for inspections and oversight by a Qualified Environmental Professional; and acknowledgement of the intention to comply with all applicable local, state and federal laws and regulations; and stipulated penalties for noncompliance. A SRMP also establishes the criteria for the acceptance of soil at a soil receiving facility and describes the protocol for monitoring and recording environmental conditions before, during and after Site activities. Soils are accepted in accordance with a Site-specific Soil Acceptance Criteria ("SAC") that contains the maximum concentrations of OHM that are allowed in soil based on applicable reportable concentrations.

19. Since 2013 MacDonald has been implementing soil fill activities at Marilyn's Landing using a phased approach (i.e., Phase I, Phase II & Phase III Activities) to facilitate development of a future Photovoltaic Solar Photovoltaic Array ("PV Array") that would span Marilyn's Landing and the adjacent BFI Halifax Landfill ("Project"). Quantities of soil fill material are needed to obtain the optimal elevations required to construct the PV Array. Collectively, Marilyn's Landing Commercial Re-Use Area and the BFI Landfill shall be referred as the "Site". To date, Phase I Activities have been completed and Phase II Activities are currently ongoing. Additional soil is proposed to be placed under Phase III Activities in an area extending from Marilyn's Landing onto the BFI Landfill and including the "swale" or the border of the two properties to reach an elevation of approximately 144 feet. Upon completion of soil fill activities, a 13.5-acre plateau will be established suitable for the PV Array. As tabulated below, an estimated total of approximately 1,732, 640 tons (1,082,900 cy) of soil is required for Phase II and Phase III, of which approximately 168,691 tons (105,432 cy) has been placed at the MLCRA and 977, 468 cy remain.

Phase	*Estimated Volumes in tons (and cy)	Volumes Remaining (CY)	*Projected Elevation (Feet)	Estimated Completion Date
<u>II</u>	<u>400,000</u> <u>(250,000)</u>	<u>144,568</u>	<u>88</u>	<u>August 2028</u>
<u>III</u>	<u>1,332,640</u> <u>(832,900)</u>	<u>832,900</u>	<u>144</u>	<u>August 2028</u>
<u>TOTAL</u>	<u>1,732,640</u> <u>(1,082,900)</u>	<u>977,468</u>		

* Volumes/Elevations based on Final Site Grading Plans (note; conversion factor of 1.6 tons/cubic yard used in calculations)

20. The Respondents and MassDEP are entering into this Consent Order to establish the requirements for the Respondents to conduct the Site activities. The Respondents have proposed to accept large quantities of soil as fill material on an area of land site-assigned under 310 CMR 16.00. The Department has determined that it is appropriate to incorporate elements of COMM-15-01 into this Consent Order to ensure that the reuse of large volumes of soil for this project does not result in a condition that is above a level of No Significant Risk of harm to health, safety, public welfare or the environment and would not create new releases or threats of release of oil or hazardous materials to the environment. These activities include, but are not limited to, an enforceable schedule and stipulated penalties for noncompliance with the requirements of this Consent Order. MassDEP and the Respondents are not entering into this Consent Order as the result of any existing non-compliance by the Respondents.

21. The following facts and allegations have led MassDEP to issue this Administrative Consent Order:

MARILYN'S LANDING/PHASE II

- A. MacDonald is the owner of an approximately 7.65-acre Site assigned property known as Marilyn's Landing Commercial Reuse Area ("Marilyn's Landing" or "MLCRA"), located on Plymouth Street, Bridgewater, Massachusetts, 02324. On November 14, 1988, Marilyn's Landing was site assigned by the Town of Bridgewater Board of Health for a sanitary landfill and/or a solid waste transfer station.
- B. Marilyn's Landing was historically used for sand and gravel mining to provide daily cover and other uses related to the adjoining BFI Halifax Sanitary Landfill ("BFI Landfill") located to the east of Marilyn's Landing in the Town of Halifax. The municipal boundary between the Town of Bridgewater and the Town of Halifax runs along the eastern property boundary of Marilyn's Landing. Marilyn's Landing was not used for disposal of solid waste and there is no evidence of unauthorized dumping, tanks, or other unauthorized use on Marilyn's Landing.
- C. Marilyn's Landing is zoned industrial as shown on the Bridgewater Zoning Map (February 6, 2007) and is bound by; undeveloped industrial-zone land to the north, undeveloped industrial-zoned land to the south and wetlands to the west which are situated on MacDonald's property. A Zone II Aquifer Protection District area is located approximately 2,500 feet to the west of Marilyn's Landing.

- D. The wetlands to the west include two parcels of land zoned residential that are within 500 feet of Marilyn's Landing. These two parcels include Parcel 10 and 17 of Map 40 as identified by the Bridgewater Assessors Office. While this zoning classification would be subject to the Category RCS-1 Reportable Concentrations under 310 CMR 40.0361(1)(a), no residences are allowed to be built within these wetlands pursuant to the Massachusetts Wetlands Protection Act. MacDonald, who owns the property, agreed to record a deed restriction in the Plymouth County Registry of Deeds prohibiting residential development of the parcel of land.
- E. The Notice of Deed Restriction was filed with the Plymouth County Registry of Deeds on December 20, 2017 by MacDonald Industries, Inc. (Book 49369, Page 164-165), and included in the "Initial Construction Status Report" submitted to MassDEP on January 2, 2018.
- F. The Reportable Concentrations ("RCs") applicable to Marilyn's Landing are Category RCS-2 Reportable Concentrations for soil and Category RCGW-2 Reportable Concentrations for groundwater.
- G. On January 20, 2012, MacDonald contacted MassDEP with a proposal to fill the MLCRA with an estimated 500,000 tons (approximately 312,500 cy) of soils with documented concentrations of contaminants below the Category RCS-1 Reportable Concentrations to create a 65-foot high soil mound for the installation of a solar array. On that same date, MassDEP advised MacDonald to submit a soil management plan describing the project, including a stormwater management plan. On June 24, 2013, MacDonald submitted a SRMP to MassDEP for the proposed project.
- H. On December 10, 2013, the Town of Bridgewater Conservation Commission issued an Order of Conditions to MacDonald allowing the construction of drainage improvements and placement of fill at the MLCRA. On July 14, 2015, the Town of Bridgewater Conservation Commission issued a new Order of Conditions to MacDonald to address the placement of fill soils at Marilyn's Landing to an elevation of 88 feet (NAVD).
- I. On November 30, 2017, MassDEP and MacDonald entered into an Administrative Consent Order No. 0003451 ("First Consent Order") to implement Phase II Activities at Marilyn's Landing.
- J. MacDonald represented to MassDEP, that prior to the Department's issuance of the First Consent Order, it had accepted soils with concentrations up to the Category RCS-1 Reportable Concentrations for fill at Marilyn's Landing to establish a suitable platform for a proposed solar array ("Phase I Activities"). MacDonald has represented to MassDEP that it has accepted and used (or "reused") approximately 400,000 tons (approximately 267,000 cy) of soils at Marilyn's Landing, corresponding to an elevation of approximately 65 feet (North American Vertical Datum or "NAVD").
- K. On March 3, 2019, MassDEP and MacDonald entered into Amendment (the "Amendment") Number 1 to the Consent Order, Enforcement Doc No. 00006711. The Amendment among other things, incorporated a revised Soil Acceptance Criteria and other pertinent project information associated with Phase II Activities.
- L. As of the effective date of this Consent Order, MacDonald has represented to MassDEP that it has accepted approximately 591,468 tons (approximately 369,667 cy) of soil at Marilyn's Landing under Phase I and II Activities.

- M. On March 31, 2017, the MassDEP received a letter from the Town of Bridgewater indicating their support for Phase I and II of the project. Phase I and II of the project was included for discussion in a duly noticed agenda for the January 24, 2017 Town Council Meeting during which Council members voted unanimously to approve Phase I and II of the project.
- N. On April 5, 2017, the MassDEP received a letter from the Town of Halifax indicating their support for Phase I and II of the project. The Halifax Board of Health held several public meetings (February 1, 2017, March 1, 2017, and March 15, 2017) to discuss the project and on March 15, 2017 voted unanimously to support the proposed Phase I and II project.
- O. MassDEP approved a Site-specific SAC for Phase II Activities at Marilyn's Landing on August 18, 2017 that contained elements of both Category RCS-1 and RCS-2 criteria and required the Respondent to provide letters from both the Town of Bridgewater Board of Health and Chief Municipal Officer indicating their acceptance of the SAC.
- P. On September 1, 2017, the MassDEP received a letter from the Town of Bridgewater, Board of Health in which they stated that they found no concerns with the SAC for Phase II Activities. Similarly, on September 21, 2017, the MassDEP received a letter from the Town Manager for the Town of Bridgewater in which they stated that they found no concerns with the recently revised SAC and are in agreement with the Bridgewater Board of Health's response in the September 1, 2017 letter.
- Q. Initial SRMP: The SAC was incorporated into the Initial SRMP for Phase II Activities that was subsequently finalized on November 17, 2017.
- R. For Phase II Activities, MacDonald was required to implement a groundwater monitoring program to evaluate water quality at and down gradient of Marilyn's Landing to monitor potential releases to groundwater as a result of soil fill activities. MacDonald established a groundwater monitoring network consisting of five (5) monitoring wells including MW-1, MW-2, MW-3, MW-4, and MW-5 in which wells MW-4 and MW-5 serve as up-gradient wells. MacDonald has been conducting semi-annual (i.e., 2 times/year) groundwater monitoring in accordance with the Initial SRMP since execution of the First Consent Order.
- S. On December 31, 2018, MacDonald submitted a draft revision of the SRMP (SRMP - Revision No. 1) which included new LSP contact information, a revised soil acceptance criteria (i.e., "Revision 1") and other pertinent Phase I and II project information.
- T. MassDEP received a letter, dated December 12, 2018 from the Town of Bridgewater Board of Health in which they stated that they found no concerns with the SRMP – Revision No. 1.
- U. In response to MassDEP comments on the SRMP – Revision No. 1, MacDonald submitted a Final SRMP – Revision No. 1 on February 26, 2019.

BFI HALIFAX LANDFILL

- V. The BFI Halifax Landfill is an in-active, unlined closed landfill that underwent final closure construction between 1992 and 1996 and included the installation of a 40 millimeter High Density Polyethylene ("HDPE") geomembrane cap, the placement of drainage layer sand and topsoil and the construction of stormwater controls (drainage channels and retention basins).
- W. The BFI Landfill currently has an active landfill gas extraction system that uses a skid mounted candlestick flare unit equipped with a blower to provide vacuum on the existing well field to manage and mitigate landfill gas emissions, odors and subsurface landfill soil-gas migration.
- X. BFI is currently conducting environmental monitoring at the BFI Landfill in accordance with the BFI Landfill's Comprehensive Site Assessment September 28, 2007 approval and associated August 2007 Environmental Monitoring Plan consisting of semi-annual groundwater and surface water monitoring and quarterly soil-gas monitoring. Groundwater and surface water locations are sampled and analyzed for the parameters required in 310 CMR 19.132(2)(h): *Environmental Monitoring Requirements*.
- Y. On October 12, 2018, MassDEP issued a BWP-SW11 Major Modification permit ("October 2018 Major Mod") to BFI to modify the existing stormwater system at the BFI Landfill due to deteriorating conditions to some of the stormwater control structures. BFI has not commenced any of the work approved by MassDEP in the October 2018 Major Mod. These proposed modifications included adding diversions swales to the east and west side slopes on the southerly end of the BFI Landfill, a stormwater basin to the MacDonald property, and diversion berms to the north and south slopes of the BFI Landfill.
- Z. Additionally, the October 2018 Major Mod proposed to allow BFI to restore surface grades at the BFI Landfill to address areas at the BFI Landfill that had settled. These restoration activities were proposed to facilitate a future post-closure use such as a solar array that was being considered by BFI at the time. The restoration included the acceptance of approximately 112,000 tons (70,000 cy) of soils to increase the existing grades from 0 to 10 feet to re-establish a final top slope not less than 5% consistent with MassDEP's solid waste requirement in 310 CMR 19.112 (2) a.: *Landfill Final Cover Systems*.

PHASE III

- AA. The Respondents propose to fill the area between the BFI Landfill and Marilyn's Landing, hereinafter referred to as the "swale". The Respondents have represented that this final phase of soil fill activities is necessary to prepare the Site for a proposed future PV array that will span both MacDonald and BFI properties. The Respondents have proposed to import quantities of soils that meet compliance with the SRMP for use as fill material in the swale to reach final grades and facilitate a plateau area of approximately 13.5 acres, which will then be available for development of the PV array.
- BB. On June 19, 2019, MacDonald submitted a BWP SW-36 Landfill Post-Closure Use Major ("PCU") Application to facilitate soil fill activities on the BFI Landfill portion of the swale proposed under Phase III Activities and SRMP. BFI authorized MacDonald to submit the Application and access the BFI Landfill to implement the Post-Closure Use. The PCU Application included a final grading plan

for the combined Phase II and Phase III soil fill areas, a stormwater management plan, landfill settlement and stability analysis and provisions for replacement of vertical landfill gas collection wells and sections of gas header lines.

The PCU Application included a set of grading plans (date stamped on August 14, 2019 by Civil & Environmental Consultants, Inc.) associated with Phase III Activities and included Existing Site Conditions, Proposed Final Grading and Stormwater Management Plans, etc. ("Site Plans"). These Site Plans supersede previous versions submitted for the project by EBI Consulting, dated August 15, 2013.

- CC. On December 9, 2019, MassDEP issued a Provisional Permit Decision for purposes of obtaining public comments. MassDEP accepted written comment on the Provisional Permit Decision for a period of twenty-one (21) days. MassDEP received no public comments and issued the final permit on January 24, 2020.
- DD. The anticipated volume of fill to be placed onto the BFI Landfill area is approximately 928,000 and 403,360 tons (580,000 cy and 252,100 cy, respectively) on the MLCRA, totaling 1,332,640 tons (832,900 cy). Reaching an elevation of approximately 144 feet, the finished grades will produce a 13.5-acre plateau suitable for the PV Array.
- EE. Since Phase III Activities encompass a portion of the Landfill owned by a BFI, and with the understanding that BFI was not party to the First Consent Order or the Amendment, a new stand-alone Administrative Consent Order between the owners of the two properties, MacDonald and BFI, and MassDEP is required.
- FF. Reportable Concentrations ("RCs") applicable to the swale area are Category RCS-2 Reportable Concentrations for soil and Category RCGW-2 Reportable Concentrations for groundwater.
- GG. MacDonald represented that the Category RCGW-1 Reportable Concentrations do not apply to the Phase III operational areas since the area is not located within; the geographic boundaries of a MassDEP Approved Wellhead Protection Area (Zone II), Interim Wellhead Protection Area, Zone A of Class A surface water body used as a public water supply, Potentially Productive Aquifer, 500 feet of a private well water supply.
- HH. Private wells: According to the Towns of Bridgewater and Halifax, there are no private drinking water wells, irrigation wells, cooling water wells, agricultural wells, food processing wells, non-community water supplies or industrial wells within 1,000 feet of the Site. The Site is not served by municipal or private water systems. According to the Bridgewater and Halifax Zoning Maps, the Site is not located within an aquifer or groundwater protection district.
- II. On June 6, 2018, MassDEP received a letter from the Town of Halifax Board of Health indicating their support for the proposed Phase III Activities, which at the time, included the prospect of using COMM-97 soils, not RCS-2 soils. The BOH provided a public notice for a May 16, 2018 BOH meeting to discuss updates with MacDonald regarding Phase III Activities. The meeting concluded with the BOH voting unanimously in support of Phase III Activities.
- JJ. On June 7, 2018, MassDEP received a letter from the Town of Bridgewater BOH and Town Manager's Office providing their support for Phase III Activities, which at the time, included the

prospect of using COMM-97 soils, not RCS-2 soils. MacDonald along with BOH and the Town Manager met on May 24, 2018 to discuss updates to Phase III Activities. The Town of Bridgewater expressed their support for the Project and stated that the prospect of converting a solid waste facility into a usable platform for a PV array would be a benefit to the Towns of Bridgewater and Halifax.

- KK. On June 30, 2020, MacDonald received a letter from the Town of Halifax Board of Selectmen acknowledging that MacDonald will continue to accept non-COMM-97 soils at the Site under Phase III Activities for purposes of filling the swale area between the two properties to facilitate the proposed solar array.

COMPLETION OF PHASE II AND PHASE III ACTIVITIES:

- LL. This Consent Order covers the remaining Phase II Activities and Phase III Activities. All soil filling activities will be completed in accordance with the SRMP attached to the Consent Order, Post Closure Use Permit and associated Site Plans referenced in Section II. 21. BB.
- MM. For purposes of this Consent Order, "Site" and "Site Activities" herein refers to the soil filling areas and activities, respectively, as described above in Section II. 21. LL.
- NN. On September 26, 2019, MacDonald submitted a revised Draft SRMP to the Department which incorporates Phase III Activities including provisions of the PCU Permit and includes; increases to final elevations on both properties, updated soil acceptance criteria (i.e., Revision 2), and updated information on groundwater classification for the Site in accordance with the MCP at 310 CMR 40.0932. and a revised groundwater monitoring program. SRMP-Rev No. 2 supersedes earlier versions (i.e., Rev. No. 1) and provides the soil acceptance procedures for the remaining soil fill activities to be completed under this Consent Order.
- OO. Similar to Phase II, the Respondents will be required to implement a stand-alone groundwater monitoring program for Phase III Activities to evaluate water quality at and down-gradient of the swale that is sufficient to detect OHM releases to groundwater that may occur from soil fill activities.
- PP. MacDonald submitted a proposed groundwater monitoring program as part of the SRMP for Phase III Activities. This program will include:-; 1. baseline sampling prior to soil acceptance; 2. semi-annual monitoring during soil acceptance activities; and 3. annual monitoring for four consecutive years following completion of soil acceptance activities. The proposed sampling locations include the wells currently being monitored under Phase II combined with BFI Landfill wells; MW-103, MW-106, MW-108, and MW-113 and surface water locations; SG-1, SG-2 and SG-3. The groundwater from all monitoring locations will be analyzed for parameters specific to the soil acceptance criteria at a minimum method reporting limit less than or equal to corresponding Category RCGW-1 Reportable Concentrations.
- QQ. In response to comments from MassDEP on the revised SRMP, MacDonald submitted a Final SRMP-Revision No.2 dated September 14, 2020 to the Department which has been included as an attachment to this Consent Order.

22. The Respondents have entered into a separate Operating Agreement that will go in effect on or about December 1, 2020 which sets forth in detail their respective responsibilities, as set forth above, consistent with the Post Closure Use Permit, and this Consent Order. MassDEP is not a Party to this Agreement and is not bound by any provisions to this Agreement.

III. DISPOSITION AND ORDER

For the reasons set forth above, MassDEP hereby issues, and Respondents hereby consent to, this Order:

23. The parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matters set forth above. Respondents enter into this Consent Order without admitting or denying the facts set forth herein. However, Respondents agree not to contest such facts and allegations for purposes of the issuance or enforcement of this Consent Order.

24. MassDEP's authority to issue this Consent Order is conferred by the statutes and regulations cited in Part II of this Consent Order.

25. Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving Respondents or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.

26. ***This Consent Order shall supersede Administrative Consent Order No. 0003451 as well as Amendment #1 to that Consent Order.***

27. The Respondents shall perform the following actions:

- A. Upon the effective date of this Consent Order, Respondents shall perform any and all activities related to the Site Activities in compliance with M.G.L. c. 111, §§ 150A and 150A1/2, the Solid Waste Regulations at 310 CMR 19.000, and the Site Assignment Regulations for Solid Waste Facilities at 310 CMR 16.00; M.G. L. c.21E, the MCP, the Similar Soils Policy, and all other applicable local, state and federal laws and regulations.
- B. Upon the effective date of this Consent Order, Respondents shall perform any and all Site Activities in accordance with the SRMP-Revision No. 2 and Post Closure Use Permit and associated Site Plans referenced in Section II. 21. BB & CC.
- C. Upon the effective date of this Consent Order, Respondents shall perform any and all activities described herein in compliance with the SRMP-Revision No. 2, as may be amended from time to time with the written consent of all parties. Any failure to adhere to the SRMP-Revision No. 2, except the terms of the SRMP-Revision No. 2 that are modified by this Consent Order, shall be a violation of this Consent Order.
- D. Respondents shall ensure that the Site Activities do not result in a Condition of Air Pollution with respect to dust, noise and odors pursuant to 310 CMR 7.01. Upon notification by MassDEP that

Phase III Activities have created a Condition of Air Pollution, Respondents shall immediately cease all activities until nuisance conditions are resolved to the satisfaction of MassDEP.

- E. Respondents shall ensure that the Site Activities do not result in the alteration of any areas subject to Protection under M.G.L. c 131, § 40 unless approved by the Town of Bridgewater and Halifax Conservation Commissions where applicable.
- F. Respondents shall implement all elements of the groundwater monitoring program ("monitoring program") specified in Section II.21.PP as approved in the SRMP-Revision No. 2.
- G. **Within forty-five (45) days of the effective date of this Consent Order and prior to initiating Site Activities**, the Respondents shall collect the initial baseline groundwater samples pursuant to Section II.21.PP. The analytical results shall be submitted to the Department for review **within thirty (30) days** following the baseline sampling event.
- H. Respondents shall accept only soils that have been adequately characterized pursuant to the SRMP-Revision No. 2 prior to transport to the Site. Soil shall be subject to a suite of required field screening methods and laboratory analyses to demonstrate that chemical constituents in the soil are within the Site-specific Soil Acceptance Criteria identified in the SRMP-Revision No. 2. Chemical characterization shall be completed by collection of soil samples and analysis by a Massachusetts state-certified laboratory using method reporting limits that are adequate to compare sample results to corresponding soil acceptance criteria. Averaging of soil concentrations shall not be allowed. The analytical suite with appropriate laboratory methods required for soil acceptance, and frequency of sampling requirements, are specified in the SRMP-Revision No. 2.
- I. All soil utilized by the Respondents as part of the Site Activities shall meet the soil acceptance criteria specified in the SRMP-Revision No. 2 and future modifications of the SRMP-Revision No. 2 as amended and approved in writing by MassDEP.
- J. Respondents shall ensure that soils imported to the Site during Site Activities, with the exception of loads quarantined or rejected in accordance with the quality control measures in the SRMP-Revision No. 2, shall not be removed from the Site either during or at any time after completion of the Site Activities unless otherwise approved by MassDEP.
- K. Respondents shall cease accepting soil from a sending site (i.e. source site) immediately upon obtaining knowledge of any of the following:
 - i. That any load from the sending site failed to meet any visual, olfactory or field screening criteria specified in the SRMP-Revision No. 2;
 - ii. That the results of any field or laboratory analysis of soil samples from any load from a sending site failed to meet one or more acceptance criteria; or
 - iii. That any load from the sending site failed to meet the restrictions listed in Section III.26.P below.
- L. After ceasing to accept soil pursuant to Section III.27.K Respondents may resume accepting soil from a sending site upon either:

- i. Receiving a written explanation and assurance from the sending site owner; or authorized representative of the sending site owner with proof of authority, that no additional similar loads will be transported to the property; or
 - ii. Receiving supplemental analytical results that demonstrate that the soil meets all acceptance criteria.
- M. Respondents shall implement the following corrective actions when the results of any field or laboratory analysis of soil samples from any load fails to meet one or more of the acceptance criteria.
 - i. Respondents shall increase the frequency of inspections by the Independent Third-Party Inspector, including sampling, to two inspections per month until the sampling results demonstrate that the soil meets all acceptance criteria for three consecutive sample events. Respondents may then resume the monthly schedule.
 - ii. Respondents may limit the sampling conducted under Section III.27.M.i to loads from the sending site that delivered the load that failed to meet the acceptance criteria and to the analytes that exceeded the acceptance criteria in that load. The Independent Third-Party Inspector may coordinate the additional inspections required under Section III.27.M.i with the Operator for the limited purpose of timing inspections and load sampling during the arrival of loads from the sending site that shipped the failed load. Normal monthly inspection during this time period would follow the normal scheduling requirements of this Consent Order.
 - iii. Respondents shall cease accepting any further soil from any sending site immediately upon obtaining knowledge that the results of any field or laboratory analysis of soil samples from any three (3) loads from a sending site failed to meet one or more acceptance criteria.
- N. Respondents shall ensure that soil quarantined for Quality Assurance/Quality Control ("QA/QC") testing by the Third-Party Inspector are either accepted and reused, or rejected and removed from the Site, within thirty (30) days of deposition for proper management. Loads of soil that are rejected as a result of field screening, or visual or olfactory QA/QC inspection by Respondents, shall be removed from the Site within seven (7) days of deposition. For each rejected load, Respondents shall report the following information to MassDEP in the next Construction Status Report, as specified in Section III.27.T:
 - i. the reasons the load was rejected;
 - ii. the name and address of the hauler;
 - iii. the license plate number of the truck/tractor;
 - iv. the name and address of the generator; and
 - v. the corrective actions taken by Respondents.

- O. The activities agreed to in this Consent Order shall be conducted under the overall supervision of a LSP or Qualified Environmental Professional ("QEP") to provide oversight of the work described in the SRMP-Revision No. 2 and to (i) review soil packages as that term is used in the SRMP-Revision No. 2 and (ii) conduct monthly inspections, sampling, and analysis pursuant to the SRMP-Revision No. 2. LSP means a hazardous waste site cleanup professional, as defined in M. G. L. 21A, § 19, holding a valid license issued by the Board of Registration of Hazardous Waste Site Cleanup Professionals pursuant to M. G. L. 21A, §§ 19 through 19J. QEP means an individual who:
1. is knowledgeable about the procedures and methods for characterizing wastes and contaminated media;
 2. is familiar with this Consent Order, Massachusetts and Federal regulations applicable to the management of such materials;
 3. performs or oversees the management of Contaminated Soil as an integral part of his or her professional duties; and
 4. is professionally licensed or certified in a discipline related to environmental assessment (i.e., engineering, geology, soil science or environmental science) by a state or recognized professional organization.
- Any contractual relationship between Respondents and the Project LSP/QEP for work required hereunder shall require the Project LSP/QEP, as a condition of the contract, to implement work consistent with the provisions of this Consent Order. The LSP/QEP shall, at a minimum:
- i. Observe the work for compliance with the SRMP-Revision No. 2 and provide recommendations for corrective actions to Respondents;
 - ii. Review all Soil Profile Packages, as that term is used in the SRMP-Revision No. 2, and provide written recommendations for acceptance or denial to Respondents;
 - iii. Conduct the on-Site quality control procedures pursuant to the SRMP-Revision No. 2; and
 - iv. Perform the periodic collection and analysis of groundwater samples pursuant to the SRMP-Revision No. 2.
- P. Respondents shall comply with the following SRMP-Revision No. 2 restrictions:
- i. Soil approved for use at the Site shall contain no more than 5% asphalt, brick and concrete ("ABC") material. Any such ABC material must measure less than six (6) inches in any dimension.
 - ii. Soil approved for use at the Site may contain only incidental, randomly dispersed, *de minimis* quantities of ash and/or solid waste (e.g., municipal solid waste and/or construction and demolition waste) as defined in 310 CMR 16.000 and 310 CMR 19.000, which collectively shall comprise less than 1% by volume of the soil and fill materials.
 - iii. Soil mixed with *de minimis* amounts of bentonite or other slurry materials that comprise less than 1% by volume may be accepted on a case by case basis. A description of the process and materials generating soil with slurry and the Safety Data Sheet for all slurry and any other additive products must be submitted to the Site Owner's LSP/QEP for review prior to approval. Soils that exceed *de minimis* amounts of mixed-in slurry will not be accepted.
 - iv. The acceptance of Remediation Waste, as defined at 310 CMR 40.0006, is prohibited.

- v. Soil shall not contain any free-draining liquids that cannot be managed within the operating area where they are being placed. Soils may contain naturally deposited silts and clays with minor amounts of naturally occurring organic material and moisture since natural drying of the soil can occur while it is being worked and spread. Any material delivered in a tanker or vacuum truck is prohibited.
- Q. Respondents shall have an authorized representative on-Site on a full-time basis to observe off-loading of trucks and perform visual inspections of the soil and fill materials to ensure compliance with visual, olfactory and screening criteria in the SRMP-Revision No. 2.
- R. Respondents shall obtain all applicable local, state and federal permits or approvals that may be required by the Site Activities including but not limited to National Pollution Discharge Elimination System and Massachusetts Wetlands Protection Act permits.
- S. Respondents shall notify the MassDEP thirty (30) days prior to commencement of Site Activities authorized under this Consent Order.
- T. Respondents shall submit quarterly Construction Status Reports to MassDEP and the Towns of Bridgewater and Halifax Boards of Health by the 15th of the month following each three-month period. Respondents shall submit Construction Status Reports, including all appendices and attachments, to MassDEP electronically via eDEP Transmittal Form BWSC 126, Section B(2) or equivalent under Release Tracking Number assigned to the Site Activities. Each Construction Status Report shall include the following items:
 - i. A summary of the Site Activities conducted at the Site during the prior 3-month reporting period, including a tabulated list of source locations, quantity of material (tons) from each source location since the last report, cumulative quantity of material(tons) from each source;
 - ii. Copies of all Letters of Approval and Soil Submittal Packages, including analytical data and tables, for soil and fill materials accepted during the prior three-month period;
 - iii. Identification of the major activities anticipated to be performed during the next three-month Period;
 - iv. Identify any changes to the design of the Site Activities, the schedule, and the Site contact information;
 - v. Actions Respondents have taken or a schedule for actions Respondents intends to take in response to recommendations for corrective actions made by the Independent Third-Party Inspector, if any;
 - vi. Actions taken in response to the QA/QC results reported by the Independent Third-Party Inspector, if any;
 - vii. A summary table of the loads rejected as a result of visual or olfactory QA/QC inspection by Respondents, or the QA/QC testing conducted by the Independent Third-Party

Inspector, including but not limited to: the reason(s) the load was rejected, the name and address of the hauler, the license plate number of the truck/tractor, the name and address of the generator, and the corrective actions taken by Respondents; copies of any written explanations and assurances or supplemental analytical results from the sending site owners received by Respondents pursuant to Section III.27.L.; and complete copies of the Material Shipping Records and Bills of Lading used to transport the rejected loads from the property;

- viii. A summary table showing the cumulative number of rejected loads from each sending site that had one or more loads rejected during the duration of the shipments from the sending site and a description of any corrective actions taken by Respondents pursuant to Section III.27.M of this Consent Order;
- ix. A summary table showing the number of loads that were quarantined by the Independent Third-Party Inspector during the previous twelve (12) month period and the number of loads that failed to meet any acceptance criteria and were rejected;
- x. Respondents shall increase the groundwater sampling frequency to tri-annual for two years when fifty percent (50%) or more of the loads quarantined by the Independent Third-Party Inspector in any twelve-month period failed to meet any acceptance criteria and were rejected;
- xi. The results of any groundwater monitoring conducted during the reporting period, including laboratory reports and a data summary table comparing the results to the Category RCGW-1 and Category RCGW-2 Reportable Concentrations; and
- xii. The Construction Status Report shall be signed by the Project LSP/QEP and shall include the following certification signed by Respondents:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties both civil and criminal for submitting false information.

- U. Independent Third-Party Inspections: Respondents shall engage the services of a qualified, independent individual (the "Independent Third-Party Inspector") to perform monthly inspections of the Site for compliance with the requirements of this Consent Order including, but not limited to, the SRMP-Revision No. 2, SWPPP and Grading and Drainage Plan. The Independent Third-Party Inspector must be approved, in writing, by MassDEP and hold certification as a Massachusetts Registered Professional Engineer or as an LSP. The Independent Third-Party Inspector may be the same individual as the Project LSP/QEP. Respondents shall be responsible for the timely performance of the activities required of the Independent Third-Party in this Consent Order:
 - i. The Independent Third-Party inspections shall be unannounced and randomly timed during normal operating hours.
 - ii. During each inspection, the Independent Third-Party Inspector shall, at a minimum:

- a) Observe the practices involved in the receipt and/or placement of soil at the Site, to the extent that such activities are occurring;
 - b) Inspect the soil that are being unloaded and/or placed during the inspection, if any, and inspect all areas of the Site where soils have been placed since the previous inspection;
 - c) Collect one or more sample(s) from the quarantined load and screen the sample(s) with a photoionization detector to measure total volatile organic compounds using the jar headspace method at a frequency of one per 50 cy. The Independent Third-Party Inspector shall compare the screening results with the approved SRMP-Revision No. 2 and notify Respondents immediately if the measured headspace value exceeds the criterion;
 - d) Collect grab soil samples from a minimum of one load of soil being delivered to the Site (if any arrive during the inspection) and submit the collected samples to a Massachusetts certified laboratory for the soil profile analyses specified in the SRMP-Revision No. 2 for QA/QC purposes. Respondents shall stockpile this load in a designated quarantine area pending the results of the analyses and provide the Independent Third-Party Inspector a copy of the Material Shipping Record or Bill of Lading ("BOL") for the load. If no loads arrive during the inspection, the sampling may be omitted for that month, or postponed to another date that month. Respondents shall ensure that a minimum of two (2) samples are collected per calendar quarter during the active operations. The method reporting limits for all SAC analytes must be below the corresponding criterion in order to evaluate concentrations measured in soils;
 - e) Collect a minimum of six (6) spot elevation measurements within the fill area of the Site with respect to established benchmarks; and
 - f) Inspect the property for the presence of nuisance conditions, including airborne dust and soil deposition on public roadways from trucks and trailers leaving the property; and
 - g) Inspect all erosion control measures including but not limited to, silt fence, hay bales, temporary basins and swales.
- iii. The Independent Third-Party Inspector shall have the authority to immediately stop work and notify MassDEP and the Conservation Commission(s) upon observing any violation of the Wetlands Protection Act.
- iv. The Independent Third-Party Inspector shall prepare an inspection report documenting the findings for each inspection and shall submit such report to Respondents and MassDEP on or before the 15th of each month following the month when the inspection occurred. Each inspection report shall include, but not be limited to:

- a) Observations of practices that are not compliant with the SRMP-Revision No. 2 and/or Consent Order;
- b) Observations of solid or hazardous waste, stained soils, odors and sheens;
- c) A tabular summary of quantities of soil received and placed at the Site and the number of truck loads and quantity of materials rejected at the Site, since the last inspection;
- d) The results of the QA/QC testing of the soil samples collected during the inspection, including, but not limited to the following, providing that the QA/QC results for a given inspection may be submitted in the next monthly report if not available for submittal with the inspection report:
 - 1. A copy of the Material Shipping Record or Bill of Lading for the load of soil that was sampled during the inspection, if any;
 - 2. The analytical results in a tabular format comparing the results to the Soil Acceptance Criteria identified in the SRMP-Revision No. 2;
 - 3. A clear statement regarding whether any of the analytical results equal or exceed the applicable Reportable Concentration or Soil Acceptance Criteria; and
 - 4. The laboratory analytical reports and chain of custody documents;
- e) Observations of airborne dust and dust control measures employed;
- f) Observations of soil deposition on public roadways and measures employed to control tracked soil;
- g) A plan showing spot elevation measurements and locations using the Site Plans as a base plan, and a statement regarding whether the measured elevations comply with the Site Plans;
- h) Specific recommendations for repairs, replacement or changes to erosion control measures at the Site;
- i) Status updates of the actions taken by Respondents to implement the recommendations made in prior inspection reports, if any;
- j) Actions the Respondents has taken or intends to take to correct such deviations with a schedule for completing such actions; and
- k) A tabular summary of quantities of soil received and placed at the Site and the number of truck loads and quantity of materials rejected at the Site, since the last inspection.

- v. The Inspection Report shall be signed by the Project LSP/QEP and shall include the following certification signed by Respondents:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties both civil and criminal for submitting false information.

- V. Respondents shall submit four (4) Annual Post Closure Groundwater Monitoring Reports pursuant to Section II.21.PP containing the results of each annual post-closure groundwater sampling event on the thirteenth (13), twenty-fifth (25), thirty-seventh (37), and forty-ninth (49) months following the month in which the Site Activities is completed or terminated. The reports shall include at a minimum, a summary table comparing sampling results to the Category RCGW-1 & Category RCGW-2 Reportable Concentrations.
- W. Respondents shall not exceed the maximum elevations as shown on the Site Plans and stated in the SRMP-Revision No. 2 and Post Closure Use Approval pursuant to Section II.21.QQ and Sections II.21.BB and Section II.21.CC.
- X. The Respondents shall notify the MassDEP within ninety (90) days prior to completion of the Site Activities.
- Y. Cover Soils: The Respondents shall cover all fill soils with a minimum of three (3) feet of soil that meet the Category RCS-1 Reportable Concentrations and the elevation of the soil not to exceed the approved elevations detailed in the Site Plans and SRMP-Revision No. 2. Respondents shall report on these activities in the subsequent construction status report and retain all soil packages associated with the Category RCS-1 cover soils and make them available for review by the Department when requested.
- Z. The final stabilization of the top of the fill and all slopes shall be stabilized as described in the Post Closure Use Approval, SRMP-Revision No. 2, Site Plans, Stormwater Pollution Prevention Plans, and in accordance with any Order of Conditions and other local, state (i.e., Wetlands Protection Act), and federal regulations (i.e., National Pollutant Discharge Elimination System) to prevent the discharge of pollutants (e.g., sediment, etc.) into the stormwater conveyance systems and nearby wetlands.
- AA. Respondents shall notify MassDEP, in writing, if Respondents intends to terminate the Site Activities before achieving the maximum finish grading shown in the Post Closure Use Approval and SRMP-Revision No. 2. Respondents' failure to perform SRMP-Revision No. 2-related filling activities for any contiguous 6-month period shall be deemed by MassDEP to be Respondents' termination of the Site Activities.
- BB. Respondents shall perform the following closure activities upon achieving the proposed fill sub-grade elevations, or upon Respondents' termination of the Site Activities before achieving the proposed fill sub-grade elevations:

- i. Within sixty (60) days of achieving the proposed fill sub-grade elevations or terminating the Site Activities, Respondents shall address all outstanding recommendations made by the Project LSP/QEP and/or Independent Third-Party Inspector;
 - ii. Within ninety (90) days of achieving the approved fill subgrade elevations or terminating the Site Activities, Respondents shall stabilize all slopes by applying suitable materials and establishing a vegetative cover or other cover specified in the Post Closure Use Approval, Site Plans and SRMP-Revision No. 2;
 - iii. Within one hundred and eighty (180) days of achieving the approved fill subgrade elevations or terminating the Site Activities, Respondents shall submit to MassDEP an As-Built Plan prepared and stamped by a Massachusetts Registered Land Surveyor or Professional Engineer. The As-Built Plan shall show the final elevations at the Site and any permanent stormwater management features; and
 - iv. Respondents shall continue groundwater monitoring in accordance with the SRMP-Revision No. 2 and this Consent Order.
- CC. Respondents shall maintain records of all soil accepted at the Site, including but not limited to Generator Applications, Soil Submittal Packages, soil profiles, Project LSP/QEP Recommendations and Acceptance/Approval documents, for a minimum of seven (7) years after the completion of the work. Any and all records, including records in electronic and paper form, shall be made available to MassDEP for inspection and reproduction upon request.
- DD. Respondents may submit written requests for minor modifications to the SRMP-Revision No. 2 for MassDEP review and approval. MassDEP may approve minor modifications, at its sole discretion and in writing, with or without revising this Consent Order. This does not negate any obligation for the Respondents to obtain any required approvals from the Towns of Bridgewater and Halifax for such modifications.
- EE. Prior to construction of the proposed PV Array, the Respondents will be required to submit a SW-36 Landfill Post-Closure Use Major ("PCU") Application to MassDEP for review and approval.

28. MassDEP reserves the right to rescind, suspend, or modify the SRMP-Revision No. 2 and environmental monitoring requirements or require additional assessment and/or action, as deemed necessary, to protect and maintain the environment free from objectionable nuisance conditions, dangers or threats to public health, safety or the environment.

29. MassDEP reserves the right to require Respondents to take any and all actions necessary to ensure that activities conducted at the Site do not cause any nuisance conditions including, but not limited to, dust, noise, odors or wetland impacts.

30. Unless submitted via eDEP or except as otherwise provided, all notices, submittals and other communications required by this Consent Order shall be directed to:

Solid Waste Section Chief
Bureau of Air and Waste
MassDEP-Southeast Regional Office

20 Riverside Drive
Lakeville, MA 02347

Such notices, submittals and other communications shall be considered delivered by Respondents upon receipt by MassDEP.

31. Engineering Work: All engineering work performed pursuant to this Consent Order shall be under the general direction and supervision of a qualified professional engineer registered in Massachusetts experienced in solid waste management and design. Any contractual relationship between Respondents and the engineer for work required shall require the engineer, as a condition of the contract, to implement work consistent with the provisions of this Consent Order.

32. Force Majeure

- A. MassDEP agrees to extend the time for performance of any requirement of this Consent Order if MassDEP determines that such failure to perform is caused by a Force Majeure event. The failure to perform a requirement of this Consent Order shall be considered to have been caused by a Force Majeure event if the following criteria are met: (1.) an event delays performance of a requirement of this Consent Order beyond the deadline established herein; (2.) such event is beyond the control and without the fault of Respondents and Respondents' employees, agents, consultants, and contractors; and (3.) such delay could not have been prevented, avoided or minimized by the exercise of due care by Respondents or Respondents' employees, agents, consultants, and contractors.
- B. Financial inability and unanticipated or increased costs and expenses associated with the performance of any requirement of this Consent Order shall not be considered a Force Majeure Event.
- C. If any event occurs that delays or may delay the performance of any requirement of this Consent Order, Respondents shall immediately, but in no event later than 5 days after obtaining knowledge of such event, notify MassDEP in writing of such event. The notice shall describe in detail: (i) the reason for and the anticipated length of the delay or potential delay; (ii) the measures taken and to be taken to prevent, avoid, or minimize the delay or potential delay; and (iii) the timetable for taking such measures. If Respondents intends to attribute such delay or potential delay to a Force Majeure event, such notice shall also include the rationale for attributing such delay or potential delay to a Force Majeure event and shall include all available documentation supporting a claim of Force Majeure for the event. Failure to comply with the notice requirements set forth herein shall constitute a waiver of Respondent's right to request an extension based on the event.
- D. If MassDEP determines that Respondent's failure to perform a requirement of this Consent Order is caused by a Force Majeure event, and Respondents otherwise complies with the notice provisions set forth in paragraph C above, MassDEP agrees to extend in writing the time for performance of such requirement. The duration of this extension shall be equal to the period of time the failure to perform is caused by the Force Majeure event. No extension shall be provided for any period of time that Respondents' failure to perform could have been prevented, avoided or minimized by the exercise of due care. No penalties shall become due for Respondents' failure to perform a requirement of this Consent Order during the extension of the time for performance resulting from a Force Majeure event.
- E. A delay in the performance of a requirement of this Consent Order caused by a Force Majeure event shall not, of itself, extend the time for performance of any other requirement of this Consent Order.

33. Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving Respondents or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.
34. Respondents understands, and hereby waives, its right to an adjudicatory hearing before MassDEP on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review. This waiver does not extend to any other order issued by the MassDEP.
35. This Consent Order may be modified only by written agreement of the parties hereto.
36. MassDEP hereby determines, and Respondents hereby agrees, that any deadlines set forth in this Consent Order constitute reasonable periods of time for Respondents to take the actions described.
37. The provisions of this Consent Order are severable, and if any provision of this Consent Order or the application thereof is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application, provided however, that MassDEP shall have the discretion to void this Consent Order in the event of any such invalidity.
38. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of MassDEP to issue any additional order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of MassDEP to pursue any other claim, action, suit, cause of action, or demand which MassDEP may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to: (a) enforce this Consent Order in an administrative or judicial proceeding; (b) recover costs incurred by MassDEP in connection with response actions conducted at the Site; and (c) recover damages for injury to and for destruction or loss of natural resources pursuant to M.G.L. c. 21E, § 5 or 42 U.S.C. 9601, et seq. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting MassDEP's authority to: (a) perform response actions at the Site or (b) require Respondents to conduct response actions at the Site or take other actions beyond those required by this Consent Order in order to comply with all applicable laws and regulations including, without limitation, M.G.L. c. 21E and the MCP.
39. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of MassDEP or Respondents with respect to any subject matter not covered by this Consent Order.
40. This Consent Order shall be binding upon Respondents and upon Respondents' successors and assigns. Respondent shall not violate this Consent Order and shall not allow or suffer Respondents' directors, officers, employees, agents, contractors or consultants to violate this Consent Order. Until Respondents has fully complied with this Consent Order, Respondents shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs.
41. Respondents shall pay stipulated civil administrative penalties to the Commonwealth in accordance with the following schedule if Respondents violates any provision of Section III of this Consent Order: For each day, or portion thereof, of each violation, Respondents shall pay stipulated civil administrative penalties in the following amounts:

<u>Period of Violation</u>	<u>Penalty per day</u>
1 st through 15 th days	\$250 per day
16 th through 30 th days	\$500 per day
31 st day and thereafter	\$1000 per day

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day Respondents corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether MassDEP has notified Respondents of a violation or act of noncompliance. All stipulated civil administrative penalties accruing under this Consent Order shall be paid within thirty (30) days of the date MassDEP issues Respondents a written demand for payment. If simultaneous violations occur, separate penalties shall accrue for separate violations of this Consent Order. The payment of stipulated civil administrative penalties shall not alter in any way Respondents' obligation to complete performance as required by this Consent Order. MassDEP reserves its right to elect to pursue alternative remedies and alternative civil and criminal penalties which may be available by reason of Respondents' failure to comply with the requirements of this Consent Order. In the event MassDEP collects alternative civil administrative penalties, Respondents shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order for the same violations.

Respondents reserves whatever rights it may have to contest MassDEP's determination that Respondents failed to comply with the Consent Order and/or to contest the accuracy of MassDEP's calculation of the amount of the stipulated civil administrative penalty. Upon exhaustion of such rights, if any, Respondents agrees to assent to the entry of a court judgment if such court judgment is necessary to execute a claim for stipulated penalties under this Consent Order.

42. Failure on the part of MassDEP to complain of any action or inaction on the part of Respondents shall not constitute a waiver by MassDEP of any of its rights under this Consent Order. Further, no waiver by MassDEP of any provision of this Consent Order shall be construed as a waiver of any other provision of this Consent Order.


43. Respondents agrees to provide MassDEP, and MassDEP's employees, representatives and contractors, access at all reasonable times to the Site for purposes of conducting any activity related to its oversight of this Consent Order, including the collection of groundwater and/or soil for analysis. Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.

44. This Consent Order may be executed in one or more counterpart originals, all of which when executed shall constitute a single Consent Order.

45. The undersigned certify that they are full authorized to enter into the terms and conditions of this Consent Order and to legally bind the party on whose behalf they are signing this Consent Order.

46. This Consent Order shall become effective on the date that it is executed by MassDEP.

Consented To By:
MacDonald Industries Corporation

A handwritten signature in dark ink, appearing to read "David MacDonald", written over a horizontal line.

David MacDonald
MacDonald Industries Corporation
645 Walnut Street
Bridgewater, MA 02324
Federal Employer Identification No.: 04-2925422

Date: 1-2-10-20

&

Browning-Ferris Industries, Inc.

A handwritten signature in blue ink that reads "Kevin Bremer". The signature is written in a cursive style with a horizontal line underneath.

Kevin Bremer, Area President Northeast
Browning-Ferris Industries, Inc.
1235 Westlake Drive, Suite 310
Berwyn, PA 19312
Federal Employer Identification No: 04-1254350

Date: 12/10/2020

Issued By:
DEPARTMENT OF ENVIRONMENTAL PROTECTION

 FOR 

Millie Garcia-Serrano
Regional Director
MassDEP – Southeast Regional Office
20 Riverside Drive
Lakeville, MA 02347

Date: 12/15/2020